IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

Crl.MC.No. 1522 of 2007()

CMP.3803/2006 of CHIEF JUDITIAL MAGISTRATE COURT, THALASSERY

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PETITIONER/ACCUSED:

RAMESHAN. C., S/O.LATE NANU,
`SMRITHI', P.O.KAVUMBAGAM, THALASSERY TALUK,
KANNUR DISTRICT.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS/COMPLAINANT:

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1. V.P.SURENDRAN, S/O.LATE KELAN,
VALIYAPARAMBATH HOUSE, KOLAVALLOOR AMSOM, DESOM,
P.O.THUVAKKUNNU, THALASSERY TALUK,
KANNUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY GOVERNMENT PLEADER SRI. GIKKU JACOB FOR R2

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1522 of 2007

Dated this the 23rd day of May, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. The case has now reached the stage of evidence. The prosecution evidence has been closed. The matter stands posted for defence evidence. At that stage, the petitioner filed an application to forward cheque to the expert. That application has been dismissed by the learned Magistrate by the impugned order. The petitioner claims to be aggrieved by such order.

2. Prior to the launching of prosecution, notice of demand was issued and a reply was given. In that, it would appear that the signature in the cheque is admitted and a contention is raised that the cheque was not issued for the due discharge of any legally enforcible debt or liability.

3. When the complainant was in the box, a totally different theory is seen suggested. The present version is that the signature in the cheque is also forged. In the reply notice, a specific contention that a blank signed cheque was handed over is not taken specifically also.

4. The learned Magistrate, in these circumstances, came to the conclusion that the present attempt is only to protract the proceedings. The learned Magistrate, in these circumstances, did not

choose to invoke the discretion under Section 254(2) Cr.P.C in favour of the petitioner.

5. The learned counsel for the petitioner submits that the learned Magistrate has erred grossly in not exercising the discretion under Section 254(2) Cr.P.C in favour of the petitioner. In not doing the same, failure of justice has resulted, it is submitted.

6. I am called upon to exercise the extraordinary inherent jurisdiction under Section 482 Cr.P.C. The law frowns upon challenge against interim orders which will have the effect of protracting the proceedings. This approach of the law is made very clear in Section 397(2) Cr.P.C which stipulates a bar against challenge of interlocutory orders in revision. A challenge impermissible under Section 397(2) Cr.P.C cannot lightly be permitted by invoking the extraordinary jurisdiction available to the Court. Has justice failed ? This is the crucial question. Any error in passing of the interlocutory orders can normally get corrected only when the same is challenged along with final orders that are passed.

7. I have considered the reasons given by the learned Magistrate. I note that incongruent versions are seen advanced in the reply notice and in the course of trial. As rightly noted by the learned Magistrate a specific contention that a signed blank cheque was handed over is seen taken in the reply notice. In the course of cross

examination of PW1 - and I have been taken in detail through the cross examination of the complainant. A specific contention that the signature is forged is seen taken in the reply. No other witness was examined also. Though the learned Magistrate is not legally competent to comment on the non examination of the accused persons, he is certainly justified in taking note of the non examination of the brother of the accused and another person between whom the real transaction in which the cheque was allegedly handed over did take place, according to the petitioner.

8. I shall carefully avoid making any final or authenticate expression of opinion finally. I am satisfied that it cannot, at the moment and with the available inputs, be held that the failure to exercise the discretion under Section 254(2) Cr.P.C in favour of the petitioner has resulted in any miscarriage of justice. Consequently, I am not persuaded to invoke the powers under Section 482 Cr.P.C.

9. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that the petitioner's right to challenge the impugned order along with the final order to be passed in the prosecution by the learned Magistrate shall remain unfettered by the dismissal of this Crl.M.C.

(R.BASANT, JUDGE)

rtr/-